UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

STEIN, INC.

and Case 09-CA-214633

TRUCK DRIVERS, CHAUFFEURS AND
HELPERS LOCAL UNION NO. 100,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

INTERNATIONAL UNION OF OPERATING
ENGINEERS (IUOE) LOCAL 18
(Stein, Inc.)

and Case 09-CB-214595

TRUCK DRIVERS, CHAUFFEURS AND
HELPERS LOCAL UNION NO. 100,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

STEIN, INC.

and Case 09-CA-215131
09-CA-219834

LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA (LIUNA), LOCAL 534

INTERNATIONAL UNION OF OPERATING
ENGINEERS (IUOE) LOCAL 18
(Stein, Inc.)

and Case 09-CB-215147

LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA (LIUNA), LOCAL 534

GENERAL COUNSEL'S POST-HEARING BRIEF TO THE ADMINISTRATIVE LAW JUDGE

Table of Contents

Table of Authorities

Cases

I. INTRODUCTION

This matter is before Administrative Law Judge Andrew Gollin upon two consolidated complaints and Notice of Calendar Call issued by General Counsel. The first consolidated complaint (Teamsters Local 100 consolidated complaint) was issued on April 19, 2018, and amended on April 30, 2018, in Case 09-CA-214633 on a charge filed by Truck Drivers, Chauffeurs and Helpers Local Union No. 100, affiliated with the International Brotherhood of Teamsters (Teamsters Local 100) against Stein Inc. (Respondent Stein), and Case 09-CB-214595 on a charge filed by Teamsters Local 100 against International Union of Operating Engineers (IUOE) Local 18 (Respondent Local 18). (G.C. Ex. 1(i), (l), respectively) [1]/ The second consolidated complaint (Laborers Local 534 consolidated complaint) involved herein was issued on April 19, 2018, and amended on April 30, 2018, with a second order consolidating cases issuing on June 29, 2018, in Cases 09-CA-215131 and 09-CA-219834, upon charges filed by Laborers' International Union of North America (LIUNA), Local 534 (Laborers Local 534) against Respondent Stein, and Case 09-CB-215147 upon a charge filed by Laborers Local 534 against Respondent Local 18. (G.C. Exs. 2(e), (g), (n), respectively) An original Notice of Calendar Call was issued in both consolidated complaints on April 19, 2018, with a revised Notice of Calendar Call issuing on July 12, 2018. (G.C. Exs. 2(e), 2(r), respectively)

Substantively, both consolidated complaints contain nearly identical allegations. Both allege that Respondent Stein, a legal successor to a slag operation service contract with AK Steel, violated Sections 8(a)(1), (2), (3), and (5) of the Act by failing and refusing to recognize Teamsters Local 100 and Laborers Local 534 as the collective-bargaining

[1]/ References to the transcript record will be designated as (Tr. __); references to General Counsel's Exhibits will be designated as (G.C. Ex.__); references to Respondent Stein's Exhibits will be designated as (R. Stein. Ex. __); references to Respondent Local 18's Exhibits will be designated as (R. Local 18 Ex. _____); and references to the Joint Exhibits will be designated as (J. Ex. __).

representative of their respective units, while unlawfully recognizing - and entering into, maintaining, and enforcing a collective-bargaining agreement with - Respondent Local 18 as the representative of the Teamster and Laborer units at a time that Respondent Local 18 did not enjoy support from a majority of those units. The consolidated complaints further allege that the aforementioned Respondent Stein/Respondent Local collective-bargaining agreement contained union-security and dues checkoff provisions at a time when Respondent Local 18 did not represent a majority of those employees in the Teamster and Laborers bargaining units. Moreover, Respondent Stein violated the Act by conditioning employees' future and continued employment with it upon employees joining and becoming members of Respondent Local 18, and by rendering unlawful assistance to Respondent Local 18. Lastly, for its role in the above-cited unlawful conduct, the consolidated complaints allege that Respondent Local 18 violated Sections 8(b)(1)(A), 8(b)(2), and 8(a)(3) of the Act.

For the reasons discussed herein, the undersigned respectfully submits that the record evidence, viewed as a whole, unquestionably establishes that Respondent Stein and Respondent Local 18 engaged in a pattern of widespread flouting of their respective obligations under the Act, and as such, the undersigned prays that Your Honor find Respondents in violation of the Act as alleged in both consolidated complaints.

II. STATEMENT OF FACTS

A. AK Steel Middletown Works in Middletown, Ohio.

This matter centers entirely around events that have taken place - and continue to take place - at AK Steel's Middletown Works facility in Middletown, Ohio. AK Steel is a steel manufacturer with an operation in Middletown, Ohio. As part of its steel-manufacturing process, AK Steel produces molten slag, a byproduct, or waste, created during the steel-manufacturing process. (Tr. 74, 1337) Given the undesirable-nature of the slag, AK Steel has a process in place

to separate the slag from the quality materials that will eventually become manufactured steel. (Tr. 74, 1337)

For many years, and since at least the late 1980s, AK Steel has contracted with separate entities (hereinafter collectively referred to as the "contracting entities") to provide slag removal, slag processing, and scrap reclamation work (hereinafter referred to as the "slag operation"). (J. Ex. 4, ¶ 4) In simplistic terms, the slag operation consists of removing the slag from specific areas of AK Steel's facility and hauling that slag to the contracting entities' slag operation (which is located on a different parcel of AK Steel's property). (Tr. 74-75; R. Stein Ex. 31) The slag operation is approximately two to three miles from AK Steel's blast furnace. (Tr. 75)

Once the slag has been transported to the slag operation-side of the facility, the contracting entities then process the slag into various products, including aggregates that are used to build roads. (Tr. 113, 237-238, 283, 1337-1338) Finally, the slag operation also involves scrap reclamation, where the contracting entities reclaim pieces of scrap metal from the slag, break the reclaimed metal to certain sizes, and re-sell the reclaimed metal back to AK Steel. (Tr. 1338-1339) Since at least the late 1980s, each contracting entity has provided the same slag operation services to AK Steel. (J. Ex. 4, ¶ 4)

During the same time period, each contracting entity has employed three trades to perform the slag operation work: laborers, truck drivers, and operators. (Tr. 82-83, 241, J. Ex. 4, ¶ 7) Each trade was tasked with performing discrete tasks within their trades' jurisdiction at the slag operation, and each trade was represented by their respective labor organizations for purposes of collective bargaining.

Historically, the laborers have been tasked with the manual labor segments of the slag operation, and have been represented for purposes of collective bargaining by Laborers Local 534. (J. Ex. 4, ¶ 7) In this regard, laborers have been tasked with acting as safety and fire watch, cleaning the plants/facilities with a hose and shovel, and performing lancing and burning

work - i.e. cutting large pieces of steel with a torch or lance - at the lance yard. (Tr. 83-84, 129-130, 243, 246, 283, 286, 343, 258-359, 510-512, 825, 829, 914, 1027) Laborers are also required to act as a safety attendant at the knockout platform, clean tail pullys on the plants, and operate manlifts. (Tr. 120, 243, 283, 343, 402, 513-516, 825, 832-833, 929, 933-934, 954-955, 1031, 1148; R. Stein Ex. 19)

The truck drivers have been represented by Teamsters Local 100, and, as their profession suggests, have historically been tasked with operating large, off-road dump trucks that are used to transport slag from AK Steel's blast furnace to the contracting employer's slag processing operation. (Tr. 78, 235, 237-238, 247, 280, 283, 509, 794-795; J. Ex. 4, ¶ 7; R. Stein Ex. 27) They also operate the large dump trucks to haul the finished product, i.e. the processed slag. (Tr. 78, 235, 237-238, 283, 509) Additionally, they operate water trucks which are used to spray the dirt roads for dust control in accordance with Environmental Protection Agency (EPA) regulations. (Tr. 78, 111, 235, 239-240, 280-281, 790; R. Stein Ex. 25) Occasionally, the water trucks were used to cool the molten slag in order to speed-up the processing. (Tr. 79, 111, 235) The drivers were also tasked with leaving AK Steel property to pick up parts when needed. (Tr. 83, 115, 235, 278)

Lastly, the operators have historically been represented by Respondent Local 18, and have jurisdiction over the heavy machinery and mechanic work. (Tr. 83; J. Ex. 4, ¶ 7) Operators operate front-end loaders, road graders, forklifts, backhoes, bobcats/skid steers, fuel trucks, cranes, portable plants, manlifts, scrap handler, telehandlers, and any other piece of equipment except for the dump trucks and water trucks. (Tr. 86, 116, 175, 243, 247, 248, 510, 774, 776, 779-781, 783, 785-789, 792-793; R. Stein Ex. 17-24, 26) The operators who work as mechanics are responsible for maintaining the various pieces of equipment, including the portable plants, through preventative maintenance, oil changes, repairs, and emergency repair work. (Tr. 86,

243) Lube men, employees who are tasked with greasing the heavy machinery, have also been represented by Respondent Local 18. (J. Ex. 16)

Importantly, every contracting entity recognized each respective union as the "exclusive" collective-bargaining representative of their respective units. (Jt. Exs. 2-8) Each time that a new contracting entity took over the slag operation for AK Steel, there was never an interruption of work. (Tr. 81, 506-507, 566, 928) Slag operation employees continued to perform the same functions that they performed for the predecessor employer. (Tr. 81, 507, 566) In fact, the transition from one contracting entity at the slag operation to another was so seamless, it took receiving a new uniform for employees to become aware that they had begun working for another employer. (Tr. 506-507, 566) Sometime during early to mid-2017, AK Steel once again opened up for competitive bidding the slag operation subcontract. (J. Ex. 4, ¶ 14)

B. <u>In late Summer 2017, Stein is notified that it was the lead bidder for the slag operation, and it immediately began to dismantle the three historical units</u>.

Around August 2017, Respondent Stein was notified that it was the lead bidder for the slag operation services. (Tr. 184) At that time, TMS International (TMS) was the contracting entity performing the slag operation work for AK Steel. (J. Ex. 1,¶¶ 7, 14) TMS's performance of the slag operation work ended on December 31, 2017, and Respondent Stein commenced operations the following day, January 1, 2018. (J. Ex. 1,¶ 17) Upon learning that Respondent Stein was the lead bidder, Respondent Stein's Vice-President and CFO David Holvey initiated contact with Respondent Local 18 in August 2017 to discuss Respondent Stein succeeding TMS on the AK Steel slag operation subcontract. (Tr. 184) Indeed, Holvey made contact with Respondent Local 18 prior to Respondent Local 18 making a bargaining demand. (Tr. 184) Yet, even though Holvey knew that Teamsters Local 100 represented the truck drivers, and Laborers Local 534 represented the laborers, he never contacted either union regarding Respondent Stein's eventual succession of TMS and employment of the Union's respective members. (Tr. 185-186,

214) Clearly, as of August 2017, Respondent Stein had every intention of disrupting the three historical craft units and intended to run the slag operation with one unit represented by one union, Respondent Local 18. (Tr. 186, 1006)

In August, [2]/ Holvey, Respondent Stein's chief negotiator, met with Respondent Local 18 representatives Justin Gabbard, Business Agent, and Jefferson Powell, District Representative, and others to begin the contract negotiation process. (Tr. 189, 1006; G.C. Ex. 4) As noted above, he did this prior to Respondent Local 18 making a bargaining demand, and without Respondent Local 18 presenting Respondent Stein with authorization cards to prove its alleged majority status. (Tr. 189) Respondent Local 18 was also committed to eroding the three historical units, as early on as August 2017. Indeed in August, Rick Dalton, Respondent Local 18's Business Manager, told Powell to do "whatever it takes" to represent Respondent Stein's eventual workforce, despite the fact that Respondent Local 18 did not represent the laborers or the truck drivers. (Tr. 1007)

Within two months of beginning negotiations, Holvey presented Respondent Local 18 with an initial draft contract. (Tr. 192-193, 1008; G.C. Ex. 5) The contractual bargaining unit included those laborers and drivers represented by Teamsters Local 100 and Laborers Local 534, respectively. (Tr. 1008; G.C. Ex. 5, p. 4) Moreover, the contract proposal was made prior to Respondent Local 18 presenting Respondent Stein with authorization cards to prove majority support. (Tr. 193)

By the end of October, barely two weeks after the first contract proposal was submitted, Respondent Stein was ready to "put the agreement behind us and start planning to convert some of the guys to the Operating Engineers." (G.C. Ex. 6) Indeed, Respondent Stein wanted to rapidly pursue the finalization of the contract. (Tr. 195) On November 21, Holvey sent an email

[2]/ Hereinafter, all dates are in 2017 unless otherwise noted.

to Powell indicating that Respondent Stein agreed to the latest draft collective-bargaining agreement, and requested that the parties hastily put signature to paper. (G.C. Ex. 7)

As the new year rapidly approached, Holvey continued to doggedly pursue a signed agreement. (G.C. Ex. 8) On December 14, after notifying Respondent Local 18 that Stein agreed to the finalized contract, Holvey asked Powell when he expected to have an executed copy of the agreement. (Tr. 199; G.C. Exs. 8, 9) Holvey made the same inquiry on December 19. (G.C. Ex. 10) One day earlier, on December 18, Holvey wrote to Powell to express concerns that TMS employees wanted to see the contract that Respondent Stein and Respondent Local 18 had negotiated so the employees would know what terms and conditions of employment would govern their employment with Respondent Stein. (G.C. Ex. 10)

On December 22, Respondent Local 18 and Respondent Stein electronically exchanged signature pages for the negotiated collective-bargaining agreement for Respondent Stein's eventual workforce for the slag operation, covering all three historical units. (Tr. 203, 205; G.C. Exs. 11, 12) During this same time period, Doug Huffnagel, Respondent Stein's Area Manager, became aware that an agreement between Respondent Local 18 and Respondent Stein had been reached. (Tr. 217) Not once prior to execution of the agreement covering all three crafts had Respondent Local 18 made a demand for bargaining or presented authorization cards to show proof of majority support for any of the craft units. (Tr. 206-207) Respondent Stein, being fully aware that Teamsters Local 100 represented the truck drivers working at the slag operation, and Laborers Local 534 represented the laborers working at the same location, never contacted either union to bargain about each respective units' terms and conditions of employment. (Tr. 208-209) Copies of the finalized contracts were distributed to employees on January 1, 2018. (Tr. 255, 434, 532; G.C. Ex. 15)

C. On about November 9, 2017, Respondent Stein informed TMS employees that all those hired to work for Respondent Stein would be represented by Respondent Local 18 once Respondent Stein began operations.

On about November 9, Huffnagel, Jason Westover, Respondent Stein's General Foreman, and Jeff Porter, Respondent Stein's Site Superintendent, held two meetings with TMS employees in the health and welfare trailer. These meetings took place prior to Respondent Stein beginning its interview and on-boarding process. (Tr. 138, 139) In the meetings, Huffnagel read from a "Middletown Works" informational document and answered questions from employees. (J. Ex. 1, ¶ 16, J. Ex. 13) The "Middletown Works" informational document was passed out to employees and extra copies were left on the tables. (Tr. 139, 253-254, 287, 529-530) It is undisputed that Huffnagel read the document verbatim. (Tr. 96) During these meetings, Huffnagel informed employees, consistent with the "Middletown Works" informational document, that once Respondent Stein began operations, all crafts would be represented by Respondent Local 18, and if employees had pension-related questions, they should see Respondent Local 18 for answers. (J. Ex. 13) Huffnagel acknowledged that, at these meetings, he did not explain the nature of the work or the job duties that would take effect once Respondent Stein took over. (Tr. 216)

D. Respondent Stein commenced its slag operation on January 1, 2018.

There was no hiatus when Respondent Stein succeeded TMS. (J. Ex. 1) Indeed, from December 31, 2017 through the beginning of Respondent Stein's operations, very little changed for the retained employees. As noted, Respondent Stein contracted with AK Steel to perform the same slag operation that TMS performed, at the same AK Steel location. (J. Ex. 1, ¶ 7) Respondent Stein, by January 1, 2018 and/or by January 6, 2018, admittedly employed a substantial and representative compliment of employees, a vast majority of which were employed by TMS as of December 31. (J. Ex. 1, ¶ 20-23)

Respondent Stein further retained the same job classifications used by TMS. Respondent Stein and Respondent Local 18's collective bargaining agreement covers the "general laborer," "lancer," "site laborer/safety," all classifications found in the Laborers Local 534 agreement with TMS. (J. Exs. 6, 16) It covers the classification "truck driver," the only classification found in the Teamsters Local 100 agreement with TMS. (J. Exs. 7, 16) With respect to operator classifications, the Respondent Stein/Respondent Local 18 agreement covers "lube man," mechanic "helper," "operator," "master mechanic," "crane operator," the same classifications covered in the Respondent Local 18 agreement with TMS. (J. Exs. 8, 16) Also, it retained several of TMS' supervisors. (J. Ex. 18)

In order to commence operations without a hiatus, Respondent Stein purchased from TMS all of its trucks, front-end loaders, cranes, processing plants, trailers and buildings. (Tr. 218-219). It also purchased TMS's water truck, its backhoe, and skid steer. (Tr. 218-219) Indeed, nearly 70 percent of Respondent Stein's equipment in operation as of January 1, 2018 was purchased from TMS. (G.C. Ex. 22; Jt. Exs. 20-22) From truck driver James Bowling's perspective, Respondent Stein purchased "everything TMS had." (Tr. 244) Driver Gary Wise testified that based on his observation, Respondent Stein purchased all of TMS's equipment that it operated at its former slag operation. (Tr. 530) In this same vein, Bowling and Wise testified that they have continued to drive the same dump truck for Respondent Stein that they drove for the predecessor. (Tr. 245, 532)

An analysis of the record evidence shows that through the first 2 months of 2018, on over 98.5 percent of occasions, employees for Respondent Stein performed work within their traditional classification that they performed for the predecessors. (R. Stein Exs. 28-30) According to Bowling, he has held the same position and has done the same work at that same location for 22 years. (Tr. 234) Since being hired by Respondent Stein, his duties as a truck

driver have not changed. (Tr. 239) He continues to haul and transport materials to and from the steel mill. (Tr. 239)

Employee Troy Neace was employed by TMS as a laborer. His job duties did not change when he first started for Respondent Stein. (Tr. 344-345) He did the same lancing work that he had done since he began working for a predecessor employer in 2004. (Tr. 344-345) Moreover, months after beginning his employment with Respondent Stein, he continued to perform traditional laborer work like cleaning plants, lancing, and burning. (Tr. 376) Likewise, after being hired by Respondent Stein, laborer Ken Karoly testified that he continued to perform the same tasks that he performed for TMS immediately preceding Respondent Stein commencing operations. (Tr. 405-406)

Clearly, the process by which the slag is removed, processed, and scrap is reclaimed has not changed. (Tr. 239) As with TMS, employees still have daily meetings, along with monthly safety meetings, that include all three trades. (Tr. 274, 276, 310-312, 327, 524-525; R. Stein Ex. 6) As they did with the predecessor, all three trades still use the same lunchroom (health and welfare trailer), the same locker room, the same parking lot, and the same time clock. (Tr. 275-276, 1213-1214, 1273-1274) Truck drivers employed by the predecessor employers at the slag operation were, on occasion, rented out to AK Steel if AK Steel needed additional truck drivers. (Tr. 79-80, 123-124, 240) Respondent Stein has continued this practice. (Tr. 240) In keeping with TMS practice, the different crafts still communicate with each other by radio, especially when working at the blast furnace. (Tr. 282, 333, 406)

E. <u>After commencing operations, Respondent Stein failed and refused to honor Teamsters Local 100's and Laborers Local 534's demands for recognition and bargaining, and unlawfully changed both units' terms and conditions of employment by applying the terms of its contract with Respondent Local 18</u>.

Respondents readily admit that the terms and conditions of employment enjoyed by the respective driver and laborer units, as governed by their in-force collective-bargaining

agreements, were not honored by Respondent Stein upon commencement of its operation. A quick comparison of the Respondent Stein/Respondent Local 18 collective-bargaining agreement to the Teamsters Local 100 and Laborers Local 534 agreements with TMS makes clear that Respondent Stein unilaterally changed, and failed to continue in effect, unit employees' terms and conditions of employment. (J. Exs. 6, 7, 16)

Respondent Stein also admits that on January 10, 2018, [3]/ Teamsters Local 100 made a written demand for recognition and bargaining. (J. Ex. 14) Additionally, it stipulates to receiving the Laborers Local 534 written demand for recognition and bargaining made on February 20, which followed a verbal demand for recognition and bargaining earlier that month. (G.C. Exs. 23-24; J. Ex. 17) Respondent Stein admits that it has failed and refused to recognize and bargain with either Teamsters Local 100 or Laborers Local 534.

F. Upon commencing operations, Respondent Stein enforced the union security clause in its contract with Respondent Local 18, provided unlawful assistance to Respondent Local 18, and threatened to remove employees from the schedule if they did not join Respondent Local 18, and Respondent Local 18 received such assistance and embarked on its own campaign of threats.

Respondent Local 18 admits that it has received dues and other fees remitted to it by Respondent Stein pursuant to the parties' union-security clause, and the union-security clause has been enforced with respect to the three units mentioned herein. (Tr. 66, 221, 223; G.C. Ex. 13; J. Ex. 16) Indeed, a representative of Respondent Local 18 emailed Huffnagel on about January 17 with a list of members and/or permit holders not in good standing, attaching letters to the members and/or permit holders indicating that Respondent Local 18, pursuant to the union security clause in its contract with Respondent Stein, was seeking their discharge. (Tr. 221; G.C. 13) Huffnagel ensured that these were distributed to noncomplying employees. (Tr. 221, 223)

[3]/ Hereinafter, all dates are in 2018 unless otherwise noted.

Similarly, on January 3, James Bowling received Respondent Local 18 membership information from Jason Westover in the health and welfare trailer on Respondent Stein's worksite. (Tr. 258-259; G.C. Ex. 16) Westover informed all present employees, including employees in each craft, that they had to fill out the membership packets and turn them in to Local 18. (Tr. 258, 259) Additionally, about the second week of January, Westover provided Gary Wise a membership packet for Respondent Local 18, which prompted Wise to join Respondent Local 18. (Tr. 533; G.C. Ex. 16) While distributing the membership packet to Wise, Westover informed Wise that he would remove Wise from the schedule if he did not join Respondent Local 18. (Tr. 534-535)

On another occasion, in about February prior to a morning meeting in the health and welfare trailer, Westover threatened employees present that if they did not get their membership and permit packet filled out and turned into Respondent Local 18, those employees would be taken off the schedule. (Tr. 262) Westover also indicated that a representative of Respondent Local 18 would be present on the jobsite that morning to speak with those employees who had not yet turned in their membership and permit packets. (Tr. 263)

James Bowling testified that a few days later, a representative of Respondent Local 18 was present at the jobsite. (Tr. 263) While the Respondent Local 18 representative did not speak to Bowling directly, he witnessed the Respondent Local 18 representative abruptly leave the trailer. (Tr. 267) According to Bowling, Westover left the health and welfare trailer and returned with the membership packets that the Respondent Local 18 representative had not yet finished distributing. (Tr. 267, 552) Westover proceeded to distribute the remaining packets. (Tr. 267, 552) While distributing the membership packets, Westover told employees to "take them to the [Respondent Local 18] hall. Pay your initiation fee to join the Union, or I've got to take you off the schedule." (Tr. 553) Furthermore, Jeff Porter told employees in about mid-

February that employees had to join Respondent Local 18 or they would be taken off the schedule. (Tr. 466)

On another occasion in February, Huffnagel permitted Gabbard to enter Respondent Stein's worksite and pass out envelopes to employees. (Tr. 223) Unable to see every employee on his list, Gabbard left the remaining envelopes with Huffnagel who made sure the envelopes were distributed to the correct employees. (Tr. 224-225) Huffnagel again permitted Gabbard to come back to the jobsite later that month, or the following month, to distribute additional envelopes to employees. (Tr. 225)

Moreover, Neace also recalled an individual named Justin, who identified himself as a representative of Respondent Local 18, who distributed Respondent Local 18 membership packets in the health and welfare trailer one morning. (Tr. 346-347; G.C. Ex. 16) Justin informed employees that they needed to fill out the membership packets and sign up with Respondent Local 18. (Tr. 347) Neace also recalled that about four months into his employment with Respondent Stein, Huffnagel called him into his office and told him that corporate wanted Neace to sign up with Respondent Local 18. (Tr. 347) This conversation with Huffnagel prompted Neace to sign up with Respondent Local 18. (Tr. 347)

In this connection, in early January, Gabbard informed Gary Wise that unless he signed up with Respondent Local 18, Respondent Stein would remove him from the work schedule. (Tr. 537) On another occasion, while speaking to Gabbard and Dalton at a Respondent Local 18 labor history class on the first Saturday of February, Wise was told that he could not work for Respondent Stein if did not join Respondent Local 18. (Tr. 540, 543) Indeed, Respondent Local 18 would "have to kick [Wise] off the job" if he did not join. (Tr. 543) Dalton further stated that Gabbard would be going to the jobsite the following Monday and would talk to the employees and inform them that he will have to "put some guys off the job if they [did not] pay." (Tr. 544)

G. Respondent Stein makes the discretionary decision to terminate Ken Karoly on about April 18, 2018 without first notifying and bargaining with Karoly's lawful bargaining representative.

Respondent Stein discharged Karoly on about April 18. (Tr. 406-407) That day, he was called to meet with Huffnagel, Westover, and Porter. (Tr. 407) Huffnagel presented Karoly with a termination notice, which specified that Karoly was being discharged for: (1) allegedly failing to show enthusiasm about his position with Respondent Stein; (2) allegedly complaining about his workplace; (3) damage to company property; and (4) allegedly not following written rules or procedures. (G.C. Ex. 17) Lastly, the termination notice specifically cited that Karoly was being discharged pursuant to the contractual probationary period. (G.C. Ex. 17) [4]/

As Karoly explained, however, the two incidents involving damage to company policy occurred the month prior to his discharge, and he was never disciplined by Respondent Stein for either incident. Karoly properly reported damage to a company phone, and in the other incident, he was merely a witness to an infraction committed by an operator. (Tr. 411, 413-415, 442-443) Indeed, it would have been spurious for Respondent Stein to discipline Karoly for an operator's error as Karoly, acting as a safety attendant, has no control over the piece of machinery being operated and is required to simultaneously perform a number of tasks, including listening to radios, filling out paperwork, talking to the foreman, etc. (Tr. 460) After Karoly categorically denied the allegations being levied against him, Huffnagel repeated that Respondent Stein was discharging him pursuant to the contractual probationary period. (Tr. 417) Respondent Stein never cited specific work rules that Karoly supposedly violated - it merely used its unfettered discretion to terminate him pursuant to the contractual probationary period. (G.C. Ex. 17) There was no discussion in the termination meeting about Karoly previously having his radio on the

[4]/ While the termination notice presented at hearing, which Respondent Stein provided pursuant to subpoena, has typed allegations that Karoly missed radio calls from the AK Steel foreman, Karoly testified that that allegation was not on the termination notice at the time it was presented to him on April 18. This information was added to the termination notice subsequent to Karoly's discharge.

wrong channel, nor was Karoly ever disciplined for the same. (Tr. 459) Respondent Stein admits that it did not notify or bargain with Laborers Local 534 - Karoly's lawful collective-bargaining representative - prior to issuing him discipline. (J. Ex. 1, ¶ 31)

III. LEGAL ANALYSIS

A. Respondent Stein is a successor to TMS for the slag operation subcontract with AK Steel.

The test for determining successorship under *NLRB v. Burns International Security Services, Inc.*, 406 U.S. 272 (1972) is well established:

> An employer, generally, succeeds to the collective-bargaining obligation of a predecessor if a majority of its employees, consisting of a "substantial and representative complement" in an appropriate bargaining unit are former employees of the predecessor and if the similarities between the two operations manifest a "substantial continuity" between the enterprises.

Hydrolines, Inc., 305 NLRB 416, 421 (1991) (quoting *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 43, 52 (1987); see also, *Ready Mix USA, Inc.*, 340 NLRB 946, 946-947 (2003). The "triggering" fact for the bargaining obligation occurs when the successor employs - as a majority of its workforce in a substantial and representative complement - employees of the predecessor. *Fall River Dyeing*, 482 U.S. at 46-47. "If the new employer makes a conscious decision to maintain generally the same business" and to hire, as a substantial and representative complement of its workforce, "a majority of its employees from the predecessor, then the bargaining obligation of § 8(a)(5) is activated." *Id.* at 41.

To determine whether there exists a substantial continuity between the enterprises, the Board considers several factors:

> whether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products, and basically has the same body of customers.

Fall River Dyeing, 482 U.S. at 43. Of significant importance is "whether 'those employees who have been retained will understandably view their job situations as essentially unaltered.'" *Fall*

River Dyeing, 482 U.S. at 43, quoting *Golden State Bottling Co.*, 414 U.S. 168, 184 (1973). Thus, an employer succeeds to the bargaining obligation of its predecessor if (1) the successor employs, as a majority of its workforce in a substantial and representative complement, employees of the predecessor, (2) there exists a substantial continuity of operations after the takeover, and (3) the unit of predecessor employees remains appropriate for collective bargaining under the successor's operation. *Fall River Dyeing*, 482 U.S. at 41-43.

1. By January 2 at the latest, a majority of Respondent Stein's workforce, in a substantial and representative complement, consisted of former TMS employees.

Respondent Stein stipulates that on January 1 and/or by January 6, it employed a substantial and representative compliment of employees. (Jt. Ex. 1, ¶ 23) The following chart shows the number of employees employed throughout the first week of January:

Date of Employ with Stein	Total # of Employees by Date	# of Operators Employed by Stein	# of Operators formerly employed by TMS	# of Drivers Employed by Stein	# of Drivers formerly employed by TMS	# of Laborers Employed by Stein	# of Laborers formerly employed by TMS
1/1/2018	**38**	**27**	25	**7**	6	**4**	3
1/2/2018	**56**	**38**	36	**9**	7	**9**	8
1/4/2018	**57**	**38**	36	**10**	9	**9**	8
1/6/2018	**60**	**38**	36	**10**	9	**12**	11

(J. Ex. 1, ¶¶ 20-23)

In deciding that the employer in *Fall River Dyeing* had reached its substantial and representative compliment, the Supreme Court agreed with the Court of Appeals observation that "'by mid-January petitioner had hired employees in virtually all job classifications, at least fifty percent of those it would ultimately employ in the majority of those classifications, and it employed a majority of the employees it would eventually employ when it reached full

compliment.'" *Fall River Dyeing*, 482 U.S. at 52. (emphasis added) Here, as the aforementioned chart demonstrates, as of January 1, Respondent Stein employed over 50 percent of its eventual workforce, and had hired employees in all three job classifications. And certainly by January 2, Respondent Stein employed nearly a full complement of employees in all three job classifications. And for each classification, nearly every employee hired by Respondent Stein previously worked for TMS on December 31, 2017. Accordingly, it is undisputed that by January 2, a majority of Respondent Stein's employees were formerly TMS employees.

2. A substantial continuity of operations between TMS and Respondent Stein's operations exists.

The record establishes that, without question, a substantial continuity exists between TMS and Respondent Stein's operations. Both employers conducted the same business - i.e. slag removal, slag processing, and scrap reclamation at AK Steel's Middletown Works facility. Furthermore, the transition between the employers occurred overnight. TMS ceased operations on December 31, 2017, and Respondent Stein commenced operations on January 1. Respondent Stein admits that it succeeded to the same slag operation service contract that TMS held with AK Steel prior to January 1, and began employing the operators, truck drivers, and laborers work without hiatus. Moreover, both TMS and Respondent Stein serviced one client - AK Steel - at the same Middletown, Ohio parcel of land.

In conducting its operations since January 1, the record is clear that Respondent Stein uses the same processes in performance of its slag operation contract with AK Steel. Respondent Stein is required, as was TMS, to cool molten slag, haul the cooled slag to processing plants, process the slag into other usable products, and reclaim scrap metal from the slag for purposes of selling that reclaimed metal back to AK Steel. Simply put, Respondent Stein's operation is fundamentally indistinguishable from TMS' operation.

Moreover, Respondent Stein uses the same job classifications (most being taken verbatim from the three predecessor contracts with TMS) and the same types of equipment to fulfill its contractual obligations. In fact, as of January 1, nearly 70 percent of the equipment - including portable plants, heavy machinery, work trucks, and the health and welfare trailer - that Respondent Stein used to commence its slag operation was purchased from TMS. (G.C. Ex. 22; Jt. Exs. 20-22) Respondent Stein cannot credibly deny that there exists a substantial continuity of operations, given that as of January 2, 91 percent of its employed workforce consisted of TMS employees employed as of December 31, 2017, and nearly 70 percent of its operational equipment had been used in TMS's operation as of that same date. All of which takes place for the same client at the same location used by TMS.

Lastly, viewed through the eyes of employees - as the United States Supreme Court has instructed - those employees retained by Respondent Stein will necessarily view their jobs as essentially unaltered. Gary Wise and James Bowling testified that they drive the exact same truck for Respondent Stein that they drove for TMS. According to Ken Karoly, he continued to perform the exact same task - blast furnace safety attendant - for Respondent Stein that he performed for TMS as of December 31, 2017. Moreover, employees Ova Venters and Troy Neace testified that at the time they were on-boarded by Respondent Stein, they continued to perform the same laborer job tasks that they performed for all of the predecessor employers. Based on the foregoing, the record overwhelmingly establishes that a substantial continuity exists between TMS and Respondent Stein's slag operations.

3. The individual units represented by Teamsters Local 100 and Laborers Local 534, respectively, remain appropriate for collective bargaining.

"A mere change in ownership should not uproot bargaining units that have enjoyed a history of collective bargaining unless the units no longer conform reasonably well to other standards of appropriateness." *Indianapolis Mack Sales and Service, Inc.*, 288 NLRB 1123, fn. 5

(1988). Further, "it is well established that the continued appropriateness of a bargaining unit for successorship purposes is measured at the time the bargaining obligation attaches." *Cadillac Asphalt Paving Company*, 349 NLRB 6, 9 (2007). The bargaining obligation attaches at the time that the successor hires a majority of the predecessor's employees in a substantial and representative complement. *Banknote Corp. of America*, 315 NLRB 1041, 1043 (1994). Moreover, "[t]he Board places a heavy evidentiary burden on a party attempting to show that historical units are no longer appropriate." *Id*. Indeed, "…'the Board has long held that it will not disturb an established bargaining relationship unless required to do so by the dictates of the Act or other compelling circumstances.'" *Columbia Broadcasting System, Inc.*, 214 NLRB 637, 642-643 (1974), quoting *Great Atlantic & Pacific Tea Co., Inc.*, 153 NLRB 1549, 1550 (1965).

Respondent Stein's feeble argument that operational changes made after the bargaining obligations to Teamsters Local 100 and Laborers Local 534, respectively, attached, are neither convincing nor meritorious. The Board has considered - and rejected - similar arguments. In *Cadillac Asphalt Paving*, 349 NLRB at 9, the Board dismissed the successor's argument that operational changes it made to certain unit employees' job duties disrupted the continued appropriateness of the underlying unit. Noting that the relied-upon operational changes occurred after the bargaining obligation attached, the Board found that post-obligation changes were "irrelevant to [the Board's] determination of the successorship issue." *Id*. [5]/

Similarly in *Banknote*, a case not unlike the instant matter, the Board dismissed the successor's challenge to the appropriateness of multiple units. In doing so, it highlighted the fact that "many of the changes in duties relied upon by the [successor] actually occurred after the

[5]/ For this reason, the General Counsel's objection to Respondent Stein's daily worksheets from beyond March should remain in the rejected exhibits file, as properly placed there by Your Honor. As explained below, and for the reasons discussed in *Banknote*, all daily worksheets from January and February should also be summarily rejected as irrelevant to the successorship determination.

bargaining obligation attached." *Banknote Corp. of America*, 315 NLRB at 1043. Furthermore, in conducting a substantive analysis of the purported changes, the Board stated:

> …from the testimony and other evidence presented by the [successor], we can determine only that one or more employees in one traditional bargaining unit have on some occasion performed duties within the same general job function as employees in another traditional unit. In the face of such scant evidence, the presumed appropriateness of the three traditional units represented by the Charging Parties was left undisturbed.

Id. at 1044.

Additionally, the ALJ, with Board approval, found unconvincing the fact that in some employee interviews the successor mentioned job flexibility among different crafts, and told some employees that they would do "things other than their own basic jobs." *Id*. at 1041-1042. Indeed, it was determined "that while changes in working conditions may have been casually mentioned in some employee interviews, by no means were all or most of the employees specifically told before they were hired of any definite changes." *Id*. at 1042. The successor's "inconsistent and generally vague statements to various employees in their prehire interviews were insufficient to provide notice of additional initial terms and conditions of employment." *Id.* at 1043, fn. 5. [6]/

As with the successor employers in *Banknote* and *Cadillac*, Respondent Stein relies on generalized, post-bargaining obligation changes to the workforce in a last-ditch effort to rid itself of its obligations to bargain with Teamsters Local 100 and Laborers Local 534. Throughout the administrative hearing, Respondent Stein made repeated assertions about its operation being markedly different from TMS, arguing that Respondent Stein's operation requires complete flexibility amongst the workforce. To support that argument, and not unlike the successor

[6]/ As will be discussed below, it is General Counsel's position that as of November 9, 2017, Respondent Stein forfeited its right to set initial terms and conditions of employment. The quoted language is offered to show that mere inconsistent statements offered by Respondent Stein in any prehire interviews—used to try and show it had a pre-commencement plan to functionally integrate the entire workforce—falls well short of its burden to establish that the units are no longer appropriate.

employers is *Banknote* and *Cadillac*, Respondent offered intermittent and occasional evidence - none prior to its bargaining obligations attaching - that a few employees performed work outside of their traditional job classifications, and also offered generalized, self-serving testimony that some employees were told in interviews that they would be subjected to a more flexible working environment. Considering the Board's rulings in *Banknote* and *Cadillac*, it seems Respondent Stein used plays from the wrong playbook.

Respondents offered scant evidence that its workforce is any more functionally integrated than the workforce run by TMS. In an attempt to show otherwise, Respondent Stein offered a few daily worksheets to show that employees have worked outside their traditional job classifications since it commenced operations. This "evidence" is less-than-compelling. There are no examples of employees working outside their traditional job classification prior to January 2, the date that Respondent Stein's bargaining obligations with Teamsters Local 100 and Laborers Local 534 attached, and the operative date for measuring the continued appropriateness of a unit as established by the Board. That is, at the time that the bargaining obligations attached, a majority of Respondent's employees were former TMS employees, working in the same job classifications, at the same jobsite, for the same supervisors, and using the same equipment. Their jobs, at the time that the bargaining obligation attached, were entirely unaltered. For that reason alone, Respondent Stein's "defense" fails.

But even if we were to humor Respondents and extend the operative window period - which the General Counsel does not concede is appropriate - the evidence is no better for Respondents. Respondent Stein conceded that between January 1 and the end of August, there exists approximately 14,000 daily worksheets - daily records of completed work for every employee. (Tr. 844, 913, 1038, 1096, 1119, 1154, 1297, 1313) With there being 243 calendar days in that time period, there exists approximately 57 worksheets per day; in other words, approximately 57 bargaining unit employees worked on any given day between January 1 and

August. Viewing the evidence most favorable for Respondents, the evidence reflects the following:

a. From January 1 through January 10 - the date of Teamsters Local 100 demanded recognition and bargaining - there were 0 records showing drivers performing work outside their classification. Thus, prior to Teamsters Local 100's demand for recognition and bargaining, there is zero record evidence that truck drivers did anything other than their traditional job duties that they performed for the predecessor. (R. Stein Ex. 28)

b. From January 1 through February 7, around the time that Laborers counsel Ryan Hymore verbally demanded that Respondent Stein recognize and bargain with Laborers Local 534, there were 28 records (for only four out of at least 12 laborers) showing some form of training or using non-traditional equipment. There were 0 examples of operators or drivers performing work outside of their traditional job classifications. During this same time period, there were approximately 2,166 reports of daily work submitted by employees. Therefore, from January 1 through February 7, only 1.3 percent of the approximated full universe of daily work assignments showed some form of cross-unit training or use of non-traditional equipment. (J. Ex. 17; G.C. Exs. 23, 24)

c. From January 1 through February 20, the date that Laborers Local 534 demanded, in writing, that Stein recognize and bargain with it, there were 43 records for only (four out of 12 laborers) showing some form of cross-unit training or use of non-traditional equipment. There were 0 examples of operators or drivers performing work outside of their traditional job classifications. During this same time period, there were approximately 2,907 reports of daily work submitted by employees. Therefore, from January 1

through February 20, only 1.5 percent of the approximated full universe of daily work assignments showed some form of cross-unit training or using non-traditional equipment. [7]/

Respondent Stein's incredible claim that its workforce is so functionally integrated that the historical units are no longer appropriate for bargaining is belied by the record. For decades the slag operation has been run with three separate craft units. Because of the nature of the work, all three crafts have worked alongside one another in constant communication for each predecessor employer. The inter-communication between crafts is not unique to Respondent Stein's operation. Under the predecessor, all crafts used the same parking lot, ate lunch in the same health and welfare trailer, and used the same showers and locker rooms. That employees do the same for Respondent Stein is not an indication that employees are so integrated that only one larger unit is appropriate for bargaining. On the contrary, it shows that Respondent Stein has continued in existence the same functional processes and daily working conditions that all three crafts have experienced for decades. Indeed, through February 20, nearly two months after its bargaining obligation attached, over 98.5 percent of all daily work assignments still showed that employees continued to perform their traditional craft duties for Respondent Stein. At most, Respondent Stein's evidence merely shows "intermittent" or "occasional" cross-unit work, the type that the Board has already found does not meet the "compelling circumstance" standard. [8]/

[7]/ Your Honor is respectfully urged to conclude that Respondent Stein's failure to introduce all daily work reports into the record is a logical indication that every other work report would have shown employees performing their traditional job classification duties, especially because it is the daily work reports that Respondents rely so heavily on in their failed attempt to show the units are no longer appropriate.

[8]/ Even more, such intermittent cross-unit work does not look altogether different from TMS's occasional assignment of cross-unit work, further proof that Respondent Stein's operation is, in nearly every way, the exact same as TMS operation. (Tr. 808-809)

The overwhelming evidence cited above shows that Respondent's "plan" to operate with a more functionally integrated workforce, so different from the predecessor that the historical units are no longer appropriate, is nothing more than a *post-hoc*, non-meritorious Hail Mary attempt to shirk its bargaining obligations. Like in *Banknote*, Respondent Stein's generalized, non-persuasive testimony from Huffnagel that he told some employees there would be job flexibility falls woefully short of the "compelling circumstances" needed to disrupt long-standing historical units. [9]/ Ironically, there is no evidence that Respondent Stein, in any of its communications - through counsel - with Teamsters Local 100 or Laborers Local 534 in January and February, argued or even mentioned that its operation was functionally different than TMS such that it had no successor bargaining obligation. Instead, it relied solely on its inane claim that the unions' relationship with the predecessor were governed by Section 8(f) of the Act. One would think that this "functionally integrated" argument - given how heavily Respondent Stein relies on it - would have made an appearance in Respondent Stein's discussions with Teamsters Local 100 and Laborers Local 534 at some point before trial.

[9]/ On this point, Huffnagel's testimony should be summarily discredited. His testimony was general, self-serving, inconsistent, and not worthy of belief. On cross-examination, it was shown that his hearing testimony drastically differed from sworn testimony he provided, with counsel present, during the investigation. (Tr. 1259-1263) Huffnagel could not recall how many employees he interviewed, who he interviewed, nor could he recollect what he said to each interviewee. Instead, he relied on notes he made in a notebook that, conveniently, no longer exists - yet he could not even explain what was written in his notes. He admitted that he did not discuss the same topics with each interviewee, that he was absent for some of the interviews (again he could not recall how many), that interviews ranged from a few minutes to nearly an hour, and acknowledged that some employees were retained without ever being interviewed. Based on the above, Huffnagel's self-serving hearing testimony that he informed every employee that they would be cross-trained is, frankly, incredible and not worthy of belief. Additionally, none of Huffnagel's testimony on this point was corroborated by other witnesses - like those other management officials who allegedly conducted interviews - under Respondent Stein's control.

There is no question that the three historical units involved herein remain appropriate for purposes of collective-bargaining. [10]/ Accordingly, as established in detail above, the only credible conclusion that can be made here is that Respondent Stein is a *Burns* successor to TMS. [11]/

B. By failing and refusing to recognize and bargain with Teamsters Local 100 and Laborers Local 534 as the exclusive collective-bargaining representative of their respective units, Respondent Stein violated Section 8(a)(5) of the Act.

Respondents' have admitted that Teamsters Local 100 made a written demand for recognition and bargaining on January 10. They have also admitted that Laborers Local 534 made a written demand for recognition and bargaining on February 20, subsequent to its verbal demand of the same around February 7 or 8. [12]/ Respondent Stein further admits that it has

[10]/ Respondents' tortured interpretation of the applicability of Section 8(f) to the instant matter widely misses the mark. Respondents have stipulated that the work involved herein is not building and construction work as contemplated in Section 8(f) of the Act. Nor has it ever been. It is of no consequence if either contract has an exclusive hiring hall, as it is well established that exclusive hiring halls are lawful outside of the building and construction industry. See generally, *Strand Theatre of Shreveport*, 346 NLRB 523 (2006). Because Teamsters Local 100 and Laborers Local 534 were recognized by the predecessor as the exclusive-collective bargaining representative of their respective units in a non-building and construction industry setting, their status is presumed 9(a). See, *Engineered Steel Concepts*, 352 NLRB 589, 602 (2008). Because the relationships were governed by Section 9(a), a challenge to the voluntary recognition must have been done within the statutory 10(b) period. *Id*. at 600. There has never been such challenge. It was Respondents' burden to show that Section 8(f) is applicable here; it is clear they have not done so.

[11]/ Another affirmative defense to the appropriateness of the three historical units deserves scant attention. Respondent Stein appears prepared to argue that area-wide pattern bargaining necessitates a finding that three craft units are inappropriate in this industry. First, Respondent Stein readily admitted that its Cleveland, Ohio location has four represented bargaining units. (Tr. 1190-1191) Moreover, Respondent Stein acknowledged that it has several competitors in this industry, yet failed to proffer any evidence with respect to those competitors' operations and the representational makeup of its workforce. (Tr. 1193) There is simply no record evidence with which to find that this industry, as a whole, has a pattern of combined, singular units.

[12]/ As can be surmised from Counsel for Respondents Stein's email to Ryan Hymore on February 8, Counsel for Respondent emailed Hymore, as prompted by Hymore's voicemail, and asked him to put the demand for recognition and bargaining in writing. This would be a natural and logical follow-up to a verbal demand for recognition and bargaining.

refused to recognize and bargain with either Teamsters Local 100 or Laborers Local 534 regarding their respective units. Because Respondent Stein is a *Burns* successor with certain successor obligations, it was required to honor both Unions' demands for recognition and bargaining. By failing and refusing to do so, Respondent Stein flouted its statutory responsibilities.

C. Respondent Stein violated Section 8(a)(1) of the Act and forfeited its right to set initial terms and conditions of employment through its November 9, 2017 communication, and further violated Section 8(a)(5) when it unilaterally changed employees' terms and conditions of employment.

Ordinarily, a *Burns* successor that has not made it "perfectly clear" that it intends on hiring all of the predecessor's former employees is free to set its initial terms and conditions of employment. *Burns Security Services*, 406 U.S. at 294. In the case of a "perfectly clear successor," the successor has an obligation to bargain with the exclusive collective-bargaining representative of the predecessor's employees before unilaterally changing those employees' terms and conditions of employment. *Spruce Up Corp.*, 209 NLRB 194, 195 (1974), enfd. mem. 529 F.2d 516 (4th Cir. 1975).

An application of the "perfectly clear" principle is found in circumstances where a non-perfectly clear successor otherwise loses its right to set initial terms and conditions of employment due to unfair labor practices committed in an attempt to avoid a bargaining obligation. *Potter's Drug Enterprises, Inc.*, 233 NLRB 15, 20 (1977), enfd. 584 F.2d 980 (9th Cir. 1978) (table); *Karl Kallmann d/b/a Love's Barbeque Restaurant No. 62*, 245 NLRB 78, 82 (1979), enfd. in relevant part 640 F.2d 1094 (9th Cir. 1981). The rationale for applying the "perfectly clear" principle to an ordinary *Burns* successor who—through unlawful conduct—is underserving of the successor rights bestowed upon it by *Burns* is well-grounded:

> [t]his equitable doctrine, which arose in the context of defining an appropriate remedy for an employer that sought to avoid the successor's bargaining obligation by refusing to hire applicants from the predecessor's unionized work force, is

> equally relevant to the allegation of unlawful unilateral changes. The fundamental premise for the forfeiture doctrine is that it would be contrary to statutory policy to 'confer *Burns* rights on an employer that has not conducted itself like a lawful *Burns* successor because it has unlawfully blocked the process by which the obligations and rights of such a successor are incurred.'" *State Distributing Co.*, 282 NLRB 1048, 1049 (1987). In other words, the *Burns* right to set initial terms and conditions of employment must be understood in the context of a successor employer that will recognize the affected unit employees' collective-bargaining representative and enter into good-faith negotiations with that union about those terms and conditions.

Advanced Stretchforming International, Inc., 323 NLRB 529, 530 (1997). When an employer embarks on an unlawful scheme to avoid a successorship bargaining obligation, and communicates to potential incoming employees that it refused to recognize their historical collective bargaining representative, an *Advanced Stretchforming* remedy is necessary. Requiring the successor to "forfeit" its right to set initial terms and conditions of employment is not punitive in those circumstances, but rather is consistent with the equitable principle that any uncertainty created by a successor's own misconduct should be resolved against it. See, *Eldorado, Inc.*, 335 NLRB 952, 953 (2001).

By boldly informing drivers and laborers in his November 9, 2017 meetings that all jobs would fall under Respondent Local 18 once Respondent Stein commenced operations, Respondent Stein, through Huffnagel, violated Section 8(a)(1) of the Act. In effect, Respondent Stein informed the drivers and laborers that it would unlawfully refuse to honor their bargaining representatives, irrespective of Respondent Stein's successorship bargaining obligations. Although both the drivers and laborers were represented by their designated bargaining representatives at the time of these meetings, Respondent Stein, in no uncertain terms, communicated to those employees that their bargaining representatives' relationships with the predecessor were no longer in effect. Additionally, in furtherance of its stated intentions, it negotiated a contract with Respondent Local 18 that covered both drivers and laborers without

any notification or bargaining with the units; designated bargaining representatives, at a time when Respondent Local 18 did not enjoy any support from either unit.

Respondent Stein, as a *Burns* successor, was obligated to recognize and bargain with Teamsters Local 100 and Laborers Local 534, and it violated the Act by refusing to do so. It follows then, that Respondent Stein's announcement to members of the drivers and laborers units that it would refuse to honor their bargaining representatives' relationships with TMS is, by the same token, unlawful. By Respondent Stein's egregious conduct, Respondent Stein forfeited its right to set initial terms and conditions of employment under *Advanced Stretchforming*. See, *Oxford Electronics, Inc.*, 2017 WL 2376433, JD-43-17, at 28 (2017) (successor employer forfeited the right to set initial terms and conditions of employment by refusing to enter into good-faith negotiations with the unit employees' long-term representative, instead requiring the unit, as a condition of employment, to join a separate union).

Accordingly, Respondent Stein unlawfully unilaterally changed both units' terms and conditions of employment by failing to continue the terms and conditions of employment set forth in each units' prior collective-bargaining agreements and by changing other terms and conditions of employment enjoyed by both unit employees. Indeed, Respondent Stein admits that it refused to continue in effect the terms and conditions of employment as listed in paragraph 11 of both consolidated complaints, and it is clear from the record that it changed still others.

As part of the remedy for Respondent's unilateral change, Ken Karoly should be reinstated and awarded backpay for Respondent's lawful unilateral change to his Laborers contractual probationary period, as well as the unlawful change that Respondent Stein admittedly made to the blast furnace staffing schedule. (Tr. 1223-1224; J. Ex. 6; R. Stein Ex. 32) Under the collective-bargaining agreement in place between Laborers Local 534 and TMS - to which Respondent Stein was legally obligated to give effect - the probationary period for new

employees lasted 60 days. (Jt. Ex. 6, pp. 12-13) Respondent Stein's probationary period, however, lasted 90 working days. Karoly was discharged on April 18 pursuant solely to Respondent Stein's probationary period in its contract with Respondent Local 18. Karoly's discharge occurred well outside the 60-day probationary period in the Laborers contract, and thus was directly affected by Respondent Stein's unlawful unilateral change to the probationary period. As such, Karoly should be ordered reinstated, with backpay. [13]/

D. Respondent Stein violated Section 8(a)(5) when it discharged employee Ken Karoly without first notifying and bargaining with Laborers Local 534.

The Board has concluded "that an employer must provide its employees' bargaining representative notice and the opportunity to bargain before exercising its discretion to impose certain discipline on individual employees, absent an agreement with the union providing for a process, such as a grievance-arbitration system, to address such disputes." *Total Security Management Illinois 1, LLC*, 364 NLRB No. 106, slip op. at 2 (2016). "The imposition of discipline on individual employees alters their terms and conditions of employment and implicates the duty to bargain if it is not controlled by preexisting, nondiscretionary employer policies or practices. *Total Security Management*, 364 NLRB No. 106, slip op. at 3. "When an employee is terminated . . . the termination is unquestionably a change in the employee's terms of employment." *Id*.

Thus, *Total Security Management* obligates an employer - after it has preliminarily decided to impose serious discipline, including discharge - to "provide the union with notice and an opportunity to bargain over the discretionary aspects of its decision *before* proceeding to impose the discipline." *Id*. at 10. (emphasis in original) "The aim is to enable the union to effectively represent the employee by, for example, providing exculpatory or mitigating

[13]/ As discussed below, Karoly should also be returned to work, with backpay, for Respondent Stein's violation of the principles articulated in *Total Security Management*.

information to the employer, pointing out disparate treatment, or suggesting alternative courses of action." *Id*. Any other result would "permit employers to exercise unilateral discretion over discipline after employees select a representative . . . would demonstrate to employees that the Act and the Board's processes implementing it are ineffectual, and would render the union (typically, newly certified or recognized) that represents the employees impotent." *Id*. at 12. (emphasis added) Indeed, "Courts have recognized that employees are particularly vulnerable to unfair labor practices when the bargaining relationships is new and the parties are negotiating for an initial contract." *Id*. at 12, fn. 23. (emphasis added)

In this context, if an employer can show that an employee was disciplined "for cause" within the meaning of Section 10(c) of the Act, backpay and reinstatement may not be awarded. *Id*. at 18. To make the requisite showing, an employer must show that: "(1) the employee engaged in misconduct, and (2) the misconduct was the reason for the suspension or discharge." *Id*. If such a showing is made, the General Counsel and the Charging Parties may "contest the respondent's showing, and may also seek to show, for example, that there are mitigating circumstances or that the respondent has not imposed similar discipline on other employees for similar conduct." *Id*. And if General Counsel and Charging Parties are successful in doing so, the employer then must show that it would nevertheless have imposed the same discipline, keeping in mind that the employer "retains the burden of persuasion in this analytical framework." *Id*.

Respondent Stein admits that it did not notify and bargain with Karoly's lawful collective-bargaining representative, Laborers Local 534. Moreover, one need look no further than Karoly's termination notice to determine that Karoly was subjected to Respondent Stein's discretionary decision to discharge him. The circumstances surrounding Karoly's termination do not remotely give rise to the Board's "exigent circumstances" test which would justify termination prior to notice and bargaining. In terminating Karoly, Respondent Stein did not

accuse Karoly of violating specific work rules. On the contrary, Respondent Stein relied solely on the contractual probationary period to justify Karoly's termination. Respondent Stein's reliance on Karoly's purported complaining and two incidents that occurred the month prior for which Karoly was never terminated further show the complete dearth of any justifiable conduct to warrant termination.

That Respondent relied solely on its discretion under the contractual probationary period is highlighted by its navigation of the disciplinary procedures in its contract - albeit an unlawful contract - with Respondent Local 18. Article 17.05 states that "[p]robationary employees may be laid off or discharged as exclusive [sic] determined by the Company…." (J. Ex. 16, p. 15) However, Article 7 of the contract restricts Respondent Stein's ability to summarily discharge an employee charged with conduct warranting suspension or discharge, stating that:

> 7.01 . . . an employee shall not be peremptorily discharged. When the Company concludes that the employee's conduct may justify suspension or discharge, the employee shall be suspended initially for not more than five (5) working days, and notified in writing of such suspension, and the reasons; therefore, shall be indicated. A copy of such notice shall be submitted to the Business Agent of the Union or the designated representative at the time notification is given to the employee.
>
> 17.02 During the suspension period, the employee shall, if so desired, be granted a hearing before the Plant Superintendent. . . .

(J. Ex. 16, p. 4)

Had Karoly actually committed an infraction warranting a suspension or discharge, according to Respondent Stein's unlawful contract with Respondent Local 18, Respondent Stein would have been subjected to significant red tape in order to finalize Karoly's termination. Instead, with no evidence that Karoly had remotely conducted himself in a manner warranting discharge, Respondent Stein chose the easy road, and simply cited the probationary period as a means to its desired end. But just like the proverbial double-edged sword, Respondent Stein's sole reliance on the contractual probationary period - however easy it may have been - exposes

its decision for what it really was: the ultimate use of discretionary discipline. In fact, Respondent had so little reason to discipline Karoly, let alone terminate him, it relied up on unsubstantiated griping and two incidents for which Karoly was never disciplined. Even more, Respondent Stein added additional reasons for Karoly's discharge after it had presented him with his termination notice.

While Respondents' may argue that the instant matter is inapposite to the Board's ruling in *Total Security Management* because the instant matter does not involve a newly certified unit, that argument is unavailing. Units that have historically been represented by a labor organization are no less at risk of suffering unilateral changes to their long-enjoyed terms and conditions of employment than a newly-certified unit. Surely, the instant matter serves as a noteworthy reminder of that point. And the Board clearly contemplated circumstances like the instant matter, specifically highlighting situations where a unit may be newly recognized in explaining the vulnerability of employees to unfair labor practices when the negotiating parties have a new bargaining relationship and are bargaining for an initial contract. Had Respondent Stein recognized Laborers Local 534 as the exclusive-collective bargaining agent of its laborers, the parties would have embarked upon a new bargaining relationship as they bargained for an initial contract.

For the reasons discussed above, Respondent Stein violated Section 8(a)(5) of the Act by failing and refusing to notify and bargain with Laborers Local 534 prior to using its discretion to terminate Karoly. Because Respondent Stein has fallen woefully short of proving that Karoly engaged in misconduct for which he was discharged, Respondent Stein should be ordered to reinstate Karoly with appropriate backpay until such time that it notifies and bargains with Laborers Local 534 over his discharge.

E. Respondent Stein further violated Sections 8(a)(1), (2) and (3) of the Act and Respondent Local 18 violated Sections 8(b)(1)(A), (b)(2), and 8(a)(3).

It is well established that an employer's recognition of a union as the exclusive collective-bargaining representative of its employees when the union was not the designated majority representative of those employees violates Section 8(a)(1) and (2) of the Act. *Ladies' Garment Workers (Bernard-Altman Texas Corp.) v. NLRB,* 366 U.S. 731 (1961). Additionally, entering into, maintaining, and enforcing a collective-bargaining agreement that contains union-security and dues-checkoff provisions with a union which has not validly shown that it represents a majority if the employer's employees further violates Section 8(a)(1), (2) and (3) of the Act. *Polyclinic Medical Center of Harrisburg,* 315 NLRB 1257 (1995). In the same vein, a union that accepts majority representative status and dues without the concomitant proof of majority support violates Section 8(b)(1)(A) and (2) of the Act. See, *Ladies' Garment Workers (Bernard-Altman Texas Corp.) v. NLRB,* 366 U.S. 731 (1961); *Polyclinic Medical Center of Harrisburg,* 315 NLRB 1257 (1995).

In the instant case, the truck drivers and laborers were represented by Teamsters Local 100 and Laborers Local 534, respectively, at the time that Respondent Stein succeeded TMS as the slag operation contractor. Neither Respondent has presented any evidence that either Teamsters Local 100 or Laborers Local 534 had lost majority support of their respective units, or that Respondent Local 18 enjoyed any support from those units. When Respondent Local 18 presented Respondent Stein with signed authorization cards in an attempt to show majority status of the combined unit, it only presented cards signed by operators prior to October 2017. Indeed, Respondent Local 18 was unable to furnish any signed authorization cards from employees formerly represented by either Teamsters Local 100 or Laborers Local 534.

Therefore, Respondent Stein violated Sections 8(a)(1), (2), and (3) of the Act by recognizing Respondent Local 18 and bargaining with it as the collective-bargaining

representative of the truck drivers and laborers in their respective units. Respondent Stein further violated Sections 8(a)(1), (2) and (3) of the Act by, as of December 22, 2017, entering into, maintaining, and enforcing the collective-bargaining agreement containing union-security and dues-checkoff provisions with Respondent Local 18 with respect to the truck driver and laborers units, at a time when Respondent Local 18 did not have support from a majority of the unit employees. It also violated the Act by remitting dues to Respondent Local 18. Equally, Respondent Local 18 violated Sections 8(b)(1)(A), 8(b)(2), and 8(a)(3) when it acted as the collective-bargaining representative of the truck driver and laborer units by entering into, maintaining, and enforcing the collective-bargaining agreement containing union-security and dues-checkoff provisions with Respondent Stein, and by admittedly accepting dues pursuant to those provisions, at a time when it did not have majority support from those units.

Respondent Stein additionally violated Section 8(a)(1) through repeated threats issued by admitted supervisors Jason Westover and Jeff Powell. Employees James Bowling and Gary Wise each testified that in January and February, Jason Westover, on several occasions, informed employees that they would be removed from the schedule if they did not join Respondent Local 18. In the same vein, employee Ova Venters recalled that in mid-February, Jeff Porter made the same threat - if employees did not join Respondent Local 18, they would be removed from the schedule. As Respondent Stein failed to call either Westover or Porter to testify at the hearing, the allegations outlined in paragraphs 15-17 of the Teamsters Local 100 consolidated complaint, and paragraphs 16 and 17 of the Laborers Local 534 consolidated complaint, are entirely un-rebutted. [14]/ By conditioning employees' continued employment with Respondent Stein on their signing membership applications - which included dues checkoff

[14]/ Respectfully, an adverse inference should be drawn by Your Honor for Respondent Stein's failure to call Westover or Porter as witnesses. By failing to call either supervisor to rebut the employees' testimony, it can reasonably be assumed that Westover and Porter's testimony would have been unfavorable to Respondent Stein's position. See generally, *International Automated Machines*, 285 NLRB 1122, 1123 (1987).

forms - for Respondent Local 18, Respondent Stein violated Section 8(a)(1) of the Act as alleged in both consolidated complaints.

Respondent Stein further violated Sections 8(a)(1) and (2) of the Act by rendering assistance to Respondent Local 18. By Respondent Stein's failure to call Westover as a witness, the record contains un-rebutted testimony that Westover, on numerous occasions, distributed Respondent Local 18's membership packets to employees of all crafts, including laborers and truck drivers. Further, Huffnagel admitted that he allowed Respondent Local 18 representatives access to the slag operation jobsite to pass out envelopes, containing Respondent Local 18 membership information, to employees who had not yet joined. By rendering assistance to Respondent Local 18, which did not enjoy status as the majority representative of truck drivers and laborers, Respondent Stein violated Sections 8(a)(1) and (2) of the Act.

Lastly, Respondent Local 18 - through its own pervasive unlawful conduct - violated Section 8(b)(1)(A) of the Act. The record undoubtedly shows that Respondent Local 18 received assistance from Respondent Stein with distributing Respondent Local 18 membership packets to employees in all three crafts. The record is equally clear that Respondent Local 18 did not enjoy - nor has it ever enjoyed - lawful support from a majority of truck drivers and laborers, thus the assistance it received violated Section 8(b)(1)(A) of the Act. Moreover, Gary Wise's credible and un-rebutted testimony that Justin Gabbard and Rick Dalton threatened his continued employment with Respondent Stein if he did not join Respondent Local 18 also violated Section 8(b)(1)(A). [15]/ Respondent Local 18's admission that it has enforced the union security

[15]/ As with Respondent Stein's failure to call witnesses favorably disposed to its position, an adverse inference should be drawn for Respondent Local 18's failure to call Justin Gabbard as a witness. Further, Wise's account of Dalton's threat to have him "kick[ed] off the job" if he failed to join Respondent Local 18 was not rebutted. While Dalton testified that he has never told an employee that they would be taken off the schedule, Dalton was neither asked, nor did he testify, about a specific conversation with Wise. Further, Dalton was never asked about whether he told Wise that Respondent Local 18 would have to kick him off the job. Respondent Local 18's failure to ask those important questions of its Business Manager, coupled with record

clause in its contract with Respondent Stein further corroborates the allegations that Respondent Local 18 threatened members with expulsion from the jobsite if they did not join.

IV. PROPOSED CONCLUSIONS AND FINDINGS

1. Respondent Stein is an employer engaged in commerce within the meaning of Section 2(6) and 2(7) of the Act.

2. Teamsters Local 100, Laborers Local 534, and Respondent Local 18 are labor organizations within the meaning of Section 2(5) of the Act.

3. Teamsters Local 100 is, and at all material times has been, the exclusive bargaining representative for the following appropriate unit of employees employed by Respondent Stein at the AK Steel slag operation in Middletown, Ohio: all truck drivers employed by Respondent Stein at its AK Steel, Middletown, Ohio facility, excluding all other production and maintenance employees, office clerical employees, professional employees, guards and supervisors as defined by the National Labor Relations Act.

4. Laborers Local 534 is, and at all material times has been, the exclusive bargaining representative for the following appropriate unit of employees employed by Respondent Stein at the AK Steel slag operation in Middletown, Ohio: the employees of Respondent Stein as described in Article I, Recognition, Article IV, Coverage and Article XI, Job Classifications and Rates of Pay, of Laborers Local 534's most recent collective-bargaining agreement in effect at the AK Steel, Middletown, Ohio facility and job site.

5. Since January 1, 2018, Respondent Stein has continued to perform the services of its predecessor TMS in basically unchanged form, and has employed as a majority of its employees, individuals who were previously employees of TMS, and as such Respondent Stein has continued the employing entity and is a successor to TMS.

6. Respondent Stein violated Section 8(a)(1) of the Act by conditioning the Teamsters and Laborers unit employees' employment on signing membership cards and dues check-off authorizations of Respondent Local 18.

7. Respondent Stein, as a Burns successor, violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from Teamsters Local 100 and Laborers Local 534 as the exclusive collective-bargaining representative of their respective units and thereafter continuously failing and refusing to bargain on request with Teamsters Local 100 and Laborers Local 534 as the exclusive collective-bargaining representative of their respective unit employees concerning wages, hours, and other terms and conditions of employment.

---

evidence that Respondent Local 18 has indeed attempted to have employees removed from the jobsite for failure to join or remain in good-standing, supports Wise's testimony on this point.

8. Since November 9, 2017, Respondent Stein forfeited its right, as a Burns successor, to set its initial terms and conditions of employment, and accordingly it violated Section 8(a)(5) and (1) of the Act by altering its truck drivers' and laborers' unit employees' respective terms and conditions of employment as found herein, pursuant to an unlawful application of the Respondent Local 18 contract, without first notifying Teamsters Local 100 and Laborers Local 534 and bargaining to agreement or impasse regarding such respective changes in the wages, hours, and working conditions of the unit employees.

9. Respondent Stein violated Section 8(a)(5) and (1) of the Act by failing to notify and bargain with Laborers Local 534 prior to issuing discretionary discipline to employee Ken Karoly on about April 18, 2018.

10. Respondent Stein violated Section 8(a)(3), (2), and (1) of the Act by (1) granting assistance to Respondent Local 18 and recognizing it as the exclusive collective-bargaining representative of the truck driver and laborer unit employees, (2) applying the terms and conditions of employment of the Respondent Local 18 contract, including its union-security and dues check-off provisions (and remitting dues to Respondent Local 18) to the respective unit employees, at a time when Respondent Local 18 did not represent an unassisted and uncoerced majority of the employees in the respective units, and when Teamsters Local 100 and Laborers Local 534 were the exclusive collective-bargaining representatives of their respective units, and (3) by threatening employees with layoff or discharge if they failed to join Respondent Local 18.

11. Respondent Local 18 violated Section 8(b)(1)(A), 8(b)(2), and 8(a)(3) of the Act by (1) accepting recognition from Respondent Stein as the exclusive collective-bargaining representative of the truck driver and laborer unit employees, (2) by agreeing to the application of the Respondent Local 18 contract with Respondent Stein, including its union-security and dues check-off provisions (and accepting dues from Respondent Stein), to the truck driver and laborer unit employees, at a time when it did not represent uncoerced majority of the employees in the respective units, and when Teamsters Local 100 and Laborers Local 534 were the exclusive collective-bargaining representatives of their respective units.

12. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

V. PROPOSED NOTICES

Counsel for the General Counsel urges Your Honor to consider the proposed attached Notices to Employees as part of the remedy in this case.

VI. CONCLUSION

Based on the foregoing, and the record as a whole, the undersigned respectfully submits that Respondent Stein and Respondent Local 18 engaged in a litany of statutory violations as

alleged in the consolidated complaints. Accordingly, Counsel for the General Counsel respectfully requests all relief deemed necessary under the Act to remedy Respondent's unlawful conduct.

Dated: December 18, 2018

/s/ Daniel A. Goode

Daniel A. Goode
Counsel for the General Counsel
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, OH 45202-3271

Attachments

Attachment A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Teamsters Local 100 as the exclusive collective-bargaining representative of our employees in the following unit:

all truck drivers employed by Respondent Stein at its AK Steel, Middletown, Ohio facility, excluding all other production and maintenance employees, office clerical employees, professional employees, guards and supervisors as defined by the National Labor Relations Act.

WE WILL NOT fail and refuse to recognize and bargain with Laborers Local 534 as the exclusive collective-bargaining representative of our employees in the following unit:

the employees of Respondent Stein as described in Article I, Recognition, Article IV, Coverage and Article XI, Job Classifications and Rates of Pay, of Laborers Local 534's most recent collective-bargaining agreement in effect at the AK Steel, Middletown, Ohio facility and job site.

WE WILL NOT withdraw recognition from Teamsters Local 100 or Laborers Local 534 as the exclusive collective-bargaining representative of the respective units named above.

WE WILL NOT grant assistance to Operating Engineers Local 18 or recognize it as the exclusive collective-bargaining representative of the truck drivers or laborers at a time when the Operating Engineers Local 18 does not represent an unassisted and uncoerced majority of the employees in the above-named units.

WE WILL NOT apply the terms and conditions of employment of the collective-bargaining agreement with Operating Engineers Local 18 (Local 18 contract), or any extensions, renewals, or modifications of that agreement, including its union-security provisions, to you at a time when Operating Engineers Local 18 does not represent an unassisted and uncoerced majority of the employees in the above-named units.
WE WILL NOT unilaterally change the truck drivers' or laborers' terms and conditions of employment without first notifying Teamsters Local 100 or Laborers Local 534, respectively, without first giving them an opportunity to bargain.

WE WILL NOT discriminate against you in regard to your hire or tenure of employment in order to encourage membership in Operating Engineers Local 18.

WE WILL NOT issue discretionary discipline to truck drivers or laborers without first notifying Teamsters Local 100 or Laborers Local 534, respectively, and giving them an opportunity to bargain about your discipline.

WE WILL NOT threaten our employees in the above-described units properly represented by Teamsters Local 100 and Laborers Local 534, respectively, with discharge or removal from the work schedule for failing to join Operating Engineers Local 18.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL withdraw and withhold all recognition from Operating Engineers Local 18 as the exclusive collective bargaining representative of truck drivers and laborers in the above-described units, unless and until Operating Engineers Local 18 has been certified by the National Labor Relations Board as the drivers or laborers exclusive collective-bargaining representative.

WE WILL refrain from applying to drivers or laborers the terms and conditions of employment of a collective bargaining agreement with Operating Engineers Local 18, including its union-security provisions.

WE WILL, jointly and severally, with Operating Engineers Local 18, reimburse you for all initiation fees, dues, and other moneys paid by you or withheld from your wages pursuant to the Local 18 contract, with interest.

WE WILL recognize and, on request, bargain at reasonable times and places and in good faith with Teamsters Local 100 and Laborers Local 534, respectively, as the exclusive collective-bargaining representative of our employees in the above-described appropriate units concerning wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed collective-bargaining agreement.

WE WILL notify Teamsters Local 100 and Laborers Local 534 in writing of any changes made to the drivers and laborers terms and conditions of employment on or after January 1, 2018, and **WE WILL**, on the request of either Union for their respective unit, rescind any or all changes and restore your terms and conditions of employment retroactively to January 1, 2018.

WE WILL make drivers and laborers whole, with interest, for any losses sustained due to our unlawfully imposed changes in wages, hours, benefits, and other terms and conditions of employment.

WE WILL compensate employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WILL** file with the Regional Director for Region 9, within 21 days of the date the amount of backpay is fixed by agreement, a report allocating the backpay award to the appropriate calendar year(s).

Stein, Inc.

(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at https://www.federalrelay.us/tty (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.

550 MAIN ST
RM 3003
CINCINNATI, OH 45202-3271

Telephone: (513)684-3686
Hours of Operation: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

Attachment B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT accept assistance or recognition or any dues and fees from Stein, Inc. as the exclusive collective-bargaining representative of the following units at a time when we do not represent an uncoerced majority of the employees of Stein, Inc. in the respective units:

all truck drivers employed by Respondent Stein at its AK Steel, Middletown, Ohio facility, excluding all other production and maintenance employees, office clerical employees, professional employees, guards and supervisors as defined by the National Labor Relations Act.

the employees of Respondent Stein as described in Article I, Recognition, Article IV, Coverage and Article XI, Job Classifications and Rates of Pay, of Laborers Local 534's most recent collective-bargaining agreement in effect at the AK Steel, Middletown, Ohio facility and job site.

WE WILL NOT maintain or enforce our collective-bargaining agreement with Stein, Inc. (Local 18 contract), or any extensions, renewals, or modifications of that contract, including its union-security provisions, so as to cover employees in the above-described units.

WE WILL NOT threaten to seek the discharge or removal from the work schedule any employees in the above-described units for failing to join Operating Engineers Local 18.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL decline recognition as the exclusive collective-bargaining representative of the employees of Respondent Stein, Inc. in the above-described units.

WE WILL, jointly and severally with Respondent Stein, Inc. reimburse all present and former employees in the units described above for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the Local 18 contract, with interest.

Operating Engineers Local 18

(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at https://www.federalrelay.us/tty (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.

550 MAIN ST
RM 3003
CINCINNATI, OH 45202-3271

Telephone: (513)684-3686
Hours of Operation: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

CERTIFICATE OF SERVICE

December 18, 2018

I hereby certify that I served the attached Counsel for the General Counsel's Post-Hearing Brief to the Administrative Law Judge on all parties by electronic mail at the following addresses:

Mr. Keith L. Pryatel, Esq.
Kastner Westman & Wilkins, LLC
3550 West Market Street, Suite 100
Akron, OH 44333-3369
Email: kpryatel@kwwlaborlaw.com

Mr. Timothy R. Fadel, Esq.
Fadel & Beyer
18500 Lake Rd, Suite 120
Rocky River, OH 44116-0000
Email: tfadel@fadelbeyer.com

Mr. Ryan Hymore, Esq.
Mangano Law Offices Co., LPA
3805 Edwards Rd, Suite 550
Cincinnati, OH 45209-1955
Email: rkhymore@bmanganolaw.com

Ms. Stephanie Spanja
Doll, Jansen & Ford
111 W First St., Suite 1100
Dayton, OH 45402-1156
Email: spanja@djflawfirm.com

/s/ Daniel A. Goode

Daniel A. Goode
Counsel for the General Counsel
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202